

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Marriage of JANET and
MICHAEL ORTEGA.

B288265

JANET ORTEGA,

(Los Angeles County
Super. Ct. No. BD586480)

Petitioner and Respondent,

v.

MICHAEL ORTEGA,

Respondent and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County. Colin Leis, Judge. Affirmed.

Angelyn Gates for Respondent and Appellant.

No appearance for Petitioner and Respondent.

In connection with a divorce proceeding, the trial court ordered appellant Michael Ortega make an equalizing payment to his former wife, Janet Ortega.¹ After Michael failed to make the payment, the court ordered the parties sell property they held as joint tenants, with the proceeds from the sale going to Janet as a credit against the equalizing payment. Michael appealed, contending the court lacked jurisdiction and abused its discretion. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Michael and Janet were married in 1991. During their marriage, they acquired property in Bullhead City, Arizona. Their primary residence, however, was in California.

In June 2013, Michael committed an act of domestic violence against Janet, which caused her to suffer a concussion, blurred vision, an injured arm, stitches to her upper lip, and dizziness. Janet filed a petition for dissolution of marriage the next month. In connection with those proceedings, the court issued a restraining order against Michael that gave Janet the exclusive use, control, and possession of the Bullhead City property.

The court conducted trial over the course of six days in late 2015 and early 2016, after which it issued two minute orders containing its rulings. With respect to the Bullhead City property, the court determined it was part of the community estate and ordered its equity divided equally. After dividing the remaining community estate, the court ordered Michael make an \$82,493 equalizing payment to Janet. The court also ordered Janet pay Michael \$500 per month in spousal support.

¹ We refer to the parties by their first names for the sake of clarity. We mean no disrespect.

In reaching that amount, the court noted that Michael's employability is limited due to the fact that he is 61 years old, has limited education, and suffers from health conditions that cause difficulty walking, limited flexibility, and affected eyesight.

More than a year later, on August 10, 2017, Janet filed a request for division of the Bullhead City property and an order that the property be sold. According to Janet, division was necessary because the court failed to adjudicate the property in its prior rulings. She also argued an order of sale was warranted because Michael had yet to pay the equalizing payment and it was unlikely he would be able to do so unless he sold the property.

Michael responded that the court lacked authority to divide the Bullhead City property because it had already allocated its equity and did not expressly retain jurisdiction over the property. Michael also asked the court to award him sole possession and use of the Bullhead City property on the basis that Janet had allowed it to go into disrepair. Michael claimed he wanted to make repairs to the property, but the restraining order prevented him from doing so. Michael also asked the court to order Janet pay him \$7,987.50 in back spousal support, which he "desperately needed."

The court held a hearing on September 21, 2017. The court took issue with Janet's characterization of the Bullhead City property as "unadjudicated," noting it had addressed the property in its prior rulings. Nonetheless, the court indicated it had authority, pursuant to Family Code section 290 and *In re Marriage of Fink* (1979) 25 Cal.3d 877, to enforce its prior rulings by ordering the sale of the property, with Michael's proceeds going to Janet as a credit against the outstanding equalizing

payment. The court, however, decided to continue the hearing for several months so that judgment could be entered and the parties would have an opportunity to resolve the issue.²

Shortly after the initial hearing, Michael offered to buy Janet's share of the Bullhead City property for \$17,500, which she refused.³ The next month, he offered to pay Janet \$4,500 towards the equalizing payment. Michael never made the payment, however, apparently due to a disagreement between the parties' counsel as to how to allocate the funds.⁴

At the continued hearing on January 25, 2018, Michael's counsel informed the court he had recently incurred medical expenses and might not be able to pay Janet the \$4,500 he previously offered. Nonetheless, counsel asked the court to grant Michael possession of the Bullhead City property or allow him to purchase Janet's share for \$17,500. According to counsel, Michael was homeless and if he obtained possession of the

² For various reasons not relevant to this appeal, judgment was not entered until December 20, 2017.

³ Michael's offer was apparently based on a prior offer from a third party to purchase the Bullhead City property for \$35,000. Janet accepted the third party's offer, but Michael rejected it. According to Janet, the fair market value of the property was significantly greater than \$35,000, but she had difficulty finding other buyers because Michael had threatened potential real estate agents. Janet subsequently represented to the court that the fair market value of the property was actually \$110,000.

⁴ Janet's counsel indicated she would apply the payment to amounts Michael owed under numerous sanctions orders. Michael's counsel insisted it be applied to the equalizing payment.

property, he would be in a more stable situation and better able to make the equalizing payment. Counsel also pointed out that Michael was recently able to obtain \$22,000 in a short period of time, which indicated he could pay the equalizing payment in the near future.

The court initially considered issuing an order that would allow Michael to purchase Janet's share of the Bullhead City property at fair market value. After discussing the logistics of such an order with the parties, the court rejected the idea, explaining, "there's a breakdown in the parties' ability to work together So this effort, which I'm trying to fashion so that you [Michael] could get possession of this property, which you do not currently occupy, is just an invitation for disaster, an invitation for further litigation, an invitation for further problems." The court instead ordered the parties sell the Bullhead City property and Michael deliver his proceeds from the sale to Janet as a credit against the equalizing payment. The court explained that, given Michael's health, it was unlikely he could earn enough in wages alone to support himself and make the equalizing payment. The court's minute order indicates it was acting pursuant to Family Code section 290.

Michael timely appealed.

DISCUSSION

I. Michael Has Not Shown the Court Lacked Jurisdiction

Michael contends the court lacked jurisdiction to order the Bullhead City property be sold and the proceeds from the sale delivered to Janet. Specifically, Michael argues the court lacked jurisdiction under Family Code section 2550, which permits a court to divide the community estate of the parties after a

judgment of dissolution, but only if the court expressly reserves jurisdiction to do so. (Fam. Code, § 2550.) According to Michael, because the property was no longer within the community estate, and because the court did not expressly reserve jurisdiction in its judgment and rulings, it lacked authority to divide the Bullhead City property. His contention lacks merit.

The fundamental flaw in Michael’s argument is that the court did not purport to divide the Bullhead City property pursuant to Family Code section 2550.⁵ Instead, the court indicated it was exercising its power under Family Code section 290, which vests in the court broad discretion to fashion orders enforcing family law judgments. (*Cal-Western Reconveyance Corp. v. Reed* (2007) 152 Cal.App.4th 1308, 1318; see *Bonner v. Superior Court* (1976) 63 Cal.App.3d 156, 166 [court has power to order sale of property awarded to wife to effectuate judgment requiring she make an equalizing payment]; see also *In re Marriage of Fithian* (1977) 74 Cal.App.3d 397, 402 [“That a court in a dissolution action has the power to order a spouse to pay money or deliver property into the hands of a third party cannot be doubted.”].) Michael does not directly address whether the court exceeded its jurisdiction under Family Code section 290, and we decline to develop arguments for him.⁶ (See *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368 [“This court is not inclined to act as counsel for . . . any appellant and furnish a legal argument as to how the trial court’s rulings in this regard

⁵ In a subsequent section of his opening brief on appeal, Michael acknowledges that the court’s order did not divide the Bullhead City property.

⁶ We address in the next section Michael’s argument that the court abused its discretion under Family Code section 290.

constituted an abuse of discretion’ [citation], or a mistake of law.”].)

Michael next suggests that, because the Bullhead City property is located in another state, the court lacked jurisdiction over the property and could not order its sale. It is well established, however, that even if a court lacks jurisdiction over property, it may order a party under its personal jurisdiction to sell that property. (See *In re Marriage of Fink*, *supra*, 25 Cal.3d at p. 884, fn. 5 [“where the court has jurisdiction in personam over both parties, it may order one of the parties to execute a deed by acting in personam; if the person so ordered does execute the deed, it effectively conveys the interest transferred, even though executed under threat of contempt proceedings”]; *Rozan v. Rozan* (1957) 49 Cal.2d 322, 330 [“It is well settled, however, that a court, with the parties before it, can compel the execution of a conveyance in the form required by the law of the situs and that such a conveyance will be recognized there.”]; *Taylor v. Taylor* (1923) 192 Cal. 71, 76 [“By means of its power over the person of the parties before it, a court of equity may in proper cases compel them to act in relation to property not within the jurisdiction, but its decrees do not operate directly upon the property nor affect the title.”]; Fam. Code, § 2660, subd. (b)(1) [a court may “[r]equire the parties to execute conveyances or take other actions with respect to the real property situated in the other state as are necessary”].) Michael does not dispute that the court had personal jurisdiction over him and that its order did not directly affect title to the Bullhead City property. Accordingly, it is irrelevant that the court lacked jurisdiction over the property itself.

II. The Court Did Not Abuse Its Discretion

Michael asserts the court's order constituted an abuse of discretion. We disagree.

The trial court indicated it was exercising its authority under Family Code section 290, which provides: "A judgment or order made or entered pursuant to this code may be enforced by the court by execution, the appointment of a receiver, or contempt, or by any other order as the court in its discretion determines from time to time to be necessary." (Fam. Code, § 290.) "Where, as here, a discretionary power is inherently or by express statute vested in the trial judge, his or her exercise of that wide discretion must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Jordan* (1986) 42 Cal.3d 308, 316.) We must also adopt the trial court's factual findings if supported by substantial evidence. (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254.)

Michael first argues the court abused its discretion because there was no evidence showing he could not make the equalizing payment "in a reasonable manner" unless he sold the Bullhead City property.⁷ It was undisputed, however, that Michael had

⁷ In connection with this argument, Michael asserts the trial court erroneously relied on *In re Marriage of Fink*, *supra*, 25 Cal.3d 877 as a basis for its order. The trial court made only passing reference to *In re Marriage of Fink* at the first hearing, and it did not clarify what aspect of the case it found relevant. It is not necessary to consider the issue any further, however, given it "is the ruling, and not the reason for the ruling, that is reviewed on appeal." (*Muller v. Fresno Community Hospital & Medical Center* (2009) 172 Cal.App.4th 887, 906–907.)

offered to pay only \$4,500 towards the equalization payment, which represented a tiny fraction of the total amount owed. Moreover, despite this offer, Michael never actually made the payment, and his counsel expressed some doubt as to whether he had the funds to do so. Even assuming he could make the partial payment, Michael failed to provide any concrete plans for how he intended to earn enough in wages to both support himself and satisfy the balance of the equalizing payment. He also failed to identify any other source of funds that would be sufficient to cover the payment.⁸ In fact, just a few months prior to the hearing, Michael informed the court he was in “desperate[] need[]” of spousal support payments from Janet. Moreover, as the court noted in its rulings after trial, Michael’s prospects for future employment were limited given his age, education level, and health issues. This was sufficient evidence from which the court could find that Michael would be unable to make the full equalizing payment unless he sold the Bullhead City property.

Michael next argues the court’s order was “unnecessary” under Family Code section 290 because Janet and her counsel were to blame for the “struggles over the property” and he will “suffer the worst consequences” if the property is sold. Even assuming Janet and her counsel were responsible for the dispute, we fail to see how it undercuts the stated purpose of the court’s order, which was to enforce the judgment requiring Michael

⁸ Michael urges us to consider evidence that he offered Janet \$17,500 to purchase her share of the Bullhead City property, which he argues shows he can obtain substantial funds in a short period of time. Michael, however, never disclosed the source of those funds or indicated he could use that source to pay the equalizing payment. Accordingly, we find it irrelevant to the issues before us.

make an equalizing payment. Moreover, Michael's assertion that the order will cause him to suffer greater harm is essentially an invitation to reweigh the evidence and equities, which we refuse to do on appeal. (See *In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1531 [appellate courts do not reweigh evidence].)

Finally, Michael contends the court's "inability to mediate an agreement is insufficient grounds to justify its order." In support, Michael simply recounts the trial court's various efforts at crafting an alternative order that would allow him to purchase the property at fair market value. As noted above, the court ultimately rejected such options as infeasible given the parties' inability to work together. Michael does not contest that the court's findings on that point were reasonable and supported by substantial evidence. Accordingly, we cannot say the court acted in an arbitrary, capricious, or patently absurd manner. There was no abuse of discretion.

DISPOSITION

The order is affirmed.

BIGELOW, P. J.

We concur:

STRATTON, J.

WILEY, J.